

REMARKS/ARGUMENTS

Claims 1-5 and 10-14 are rejected under 35 U.S.C. §102(a). Claims 6-8 are rejected under 35 U.S.C. §103(a). Claim 9 is designated as allowable subject matter. In light of the amendments above, the enclosed declaration and the arguments below, Applicants respectfully request reconsideration.

Section 102 Rejection.

Claims 1-5 and 10-14 are rejected under 35 U.S.C. §102(a) as being anticipated by H. T. Whelan et al. "Protection Against Methanol-induced Retinal Toxicity by LED Photostimulation," Ophthalmic Technologies XII 461 1-239-246, 2002. Applicants have enclosed the declaration of Dr. H. T. Whelan, one of the inventors of the above identified application, attesting to the fact that this publication was authored by three of the inventors of the above-identified application. The abstract and paper were published in June 2002 for a conference that took place in January 19-20, 2002. (See enclosed Exhibit A.) The above-identified application was based on a provisional patent application filed on January 17, 2003, less than a year from the January 19-20 conference date. Therefore, Whelan et al. cannot be prior art to the above identified application.

Section 103 Rejection.

Claims 6-8 are rejected under 35 U.S.C. §103(a) as being unpatentable over Whelan et al. as applied to claim 1 and further in view of Rosner et al. "Dose and Temporal Parameters in Delaying Injured Optic Nerve Degeneration by Low-energy Laser Irradiation," Laser Surgery Med. 13:61 1-617, 1993.

Applicants have "sworn behind" the Whelan et al. reference, as described in the paragraph above. The Examiner uses Rosner et al. to teach the use of low energy laser radiation to delay the degeneration of injured optic nerves. With Whelan et al. removed as a reference, Applicants do not believe that the Examiner's cited combination teaches the present invention. However, Applicants also point out that even if Whelan et al. were prior art, Rosner et al. does not combine to teach the present invention because Rosner et al. state explicitly that "non-coherent infrared light was ineffective or adversely affected the injured nerves..." [from the Abstract]. The authors conclude:

1. Coherent 632.8 nm He-Ne laser stimulation at an energy density of 40-132 J/cm² delays post-traumatic degeneraton of the injured optic nerve.

2. Non-coherent 904 + 20 nm LED stimulation at an energy density 17-25 J/cm² was ineffective or adversely affected the injured nerves.

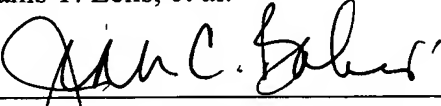
Applicants claim and describe protection at wavelengths between [claim 1] 630 – 1000 nm and [claim 3] 670 – 900 nm. Applicants also claim and describe optimal energy densities of [claim 5] 2 – 10 J/cm² or [claim 4] 0.5 – 20 J/cm². Rosner et al. teach that Applicants' method of NIR-LED would not work because the light is (1) noncoherent and (2) the energy density is too low. According to these authors, one must use coherent laser light and the energy density would need to be at least 40 J/cm².

In conclusion, Rosner et al. strengthens Applicants' argument that their claims are not obvious because Rosner et al. directly state that NIR LED treatment at an energy density between 17-25 J/cm² is ineffective or harmful.

Applicants enclose a petition and fee for a one-month extension of time accompanies this response so that the response is deemed to have been timely filed. No other extension of time is believed due, but should any additional extension be due, in this or any subsequent response, please consider this to be a petition for the appropriate extension and a request to charge the extension fee to Deposit Account No. 17-0055. No additional fees are believed due; however, if any fees are due, in this or any subsequent response, please charge Deposit Account 17-0055.

Respectfully submitted,

Janis T. Eells, et al.

By: 

Jean C. Baker, Reg. No. 35, 433
Quarles & Brady LLP
Attorney for Applicant
411 East Wisconsin Avenue
Milwaukee, WI 53202-4497
414/277-5709